IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4168 of 2007
Date of Decision: 23.3.2007

Navendu Goyal and another

Petitioners

versus

Christian Medical Officer and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MRS. JUSTICE NIRMAL YADAV

Present: Shri Vijay Sharma, Advocate for the petitioners
Shri D.S.Patwalia, Advocate for respondent Nos.1 and 2
Shri Anupam Gupta, Advocate for respondent No.3
Shri G.S.Toor, Advocate
Shri H.C.Arora and Shri J.S.Rana, Advocates

Jasbir Singh, J. (Oral)

This order will dispose of three Civil Writ Petition bearing Nos.4168, 4240 and 4423 of 2007, as common questions of fact and law are involved therein. For facility of reference, the facts are being mentioned from CWP No.4168 of 2007.

Petitioners want to get admission in Post Graduate Course with respondent No.1. In this writ petition, a prayer has been made to quash notice Annexure P/5, vide which, the candidates have been invited to fill up the seats, in post graduate courses, which have become vacant after conclusion of the first counselling.

It is apparent from the record that to fill up the seats in the Post Graduate Program 2007, a competitive test was conducted. The petitioners, along with many others, appeared in the same. Result was declared and thereafter as per merit list Annexure R1/1, to select candidates, counselling was fixed on 9.2.2007. At this stage, it will be necessary to refer to some

provisions of the Prospectus, which deal with counselling and giving admission thereafter, to the intending candidates:-

> ***"Allotment of seats by person appearing (Counselling)***
>
> ***Admissions to PG courses are based purely on merit***
>
> 1. *The allotment of seats shall be made to the candidates through personal appearance. For personal appearance the candidates will be called in order of merit.*
> 2. *The same will be held on 9.2.2007 from 0900 AM onwards in Christian Medical College, Ludhiana.*
> 3. *All candidates desirous of admission and having appeared for AWT and interview are to appear personally for the counselling.*
> 4. *The candidates will be called as per category and merit/ rank.*
> 5. *xxx xxxx xxx*
> 6. *The number of seats available in each category and in each subject will be displayed using multimedia projector in waiting hall of the admission office and updated as the counselling proceeds. The primary list is also available on www.cmcludhiana.org.*
> 7. *The candidates will have the right to chose any one of the available seats at his/ her rank and the same will be allotted to him/ her.*
> 8. *The mere fact that a candidate has appeared for allotment on the notified date does not mean that the allotment will be made to him/ her, as the same will/ shall depend upon the*

availability of seat at his/ her rank and the choices exercised by the candidate.

9. *Allotment letter and admission letter will be granted on the same day as counselling to the candidate.*
10. *The allotment of seat made will be firm and final and ordinarily seat allotted will not be changed.*
11. *Candidates who do not appear for the counselling (by personal appearance) or who reject the available seats for allotment shall forfeit any claim whatsoever on the seats available in PG program 2007.*
12. *In the matter of allocation/ admission of candidates to respective subjects and courses the decision of PG selected committee of Christian Medical College, Ludhiana shall be final."*

It is apparent from the provisions of the Prospectus, referred to above, that admission has to be made purely on the basis of merit. It is further provided that the candidates are supposed to appear in person, at the time of counselling and if anybody fails to do so, he will lose his claim to get admission in the course, in question. It is also provided in clause 7 that the candidates will have a right to choose any one of the available seats at his/ her rank and the same will be allotted accordingly. It is further mentioned that allotment once made, will be final and it will ordinarily not be changed thereafter. In Clause 11, it is also mentioned that if a candidate rejects the available seat for allotment, he/ she shall forfeit claim whatsoever on the seats available in PG program 2007. It is an admitted fact that in the merit list, petitioner No.1 figures at Sr.No.30 and petitioner No.2 figures at Sr.No.32. When their turn came to opt for the seat, specialty of their choice

was not available, as such, both the petitioners rejected the seats offered to them. All the seats were filled up and on that date no seat remained vacant. Perusal of the Prospectus indicates that there exists no provision for the second counselling. Probably, it escaped notice of the authorities that after the first counselling, when all seats are filled up, some seats may fall vacant, if any candidate opts not to join the course. In fact, this has happened, when as many as 10 students fail to join the course and those seats become available for allotment to other candidates. By interpreting provisions of clause 11, to mean that those candidates, who have already failed to appear or have rejected offer made to them, are not entitled to get the seat, notice Annexure P/5 was issued, wherein it was provided as under:-

"Q. Who is NOT eligible for second counselling?

A. 1. Those who were ABSENT for counselling on 9.2.2007.

2. Those that REJECTED the offer given to them on 9.2.2007 and signed document."

We feel that the interpretation is not correct. When we read all the provisions of the Prospectus, as reproduced above, it makes abundantly clear that the admissions have to be made on the basis of merit above. On the date of first counselling, as per merit, when seat was offered to the petitioners, specialty of their choice, was not available, they opted not to accept the available seat. It is not a case of the respondent-management that on account of their refusal, any seat remained vacant. All seats were filled up. It is only thereafter that when some candidates fail to join, the seats have now become available for further allotment. No provision was made for second counselling. We feel that when we interpret the provisions of Prospectus, as reproduced above, it becomes very clear that the same procedure, which was followed at the time of first counselling, has again to

be applied by the respondent-college. If interpretation given by the management- college is accepted, it would mean that the persons, who are less meritorious, will get admission in Post Graduate Course, which, we feel, will not be a healthy trend.

In view of facts mentioned above, notice Annexure P/5 is set aside and directions are issued to respondent Nos.1 and 2, to advertise the seats, afresh and offer these seats to all the candidates, as per their merits.

It is made clear that the candidates, who joined the course on the basis of first counselling, they be also allowed to opt for the vacant seats now, as per their merit.

At this stage, Shri Patwalia states that the respondents will issue a fresh notice, for the second counselling, which will be held on 18.4.2007.

Disposed of.

Copy of the order be given *dasti* on payment of usual charges.

(Jasbir Singh)
Judge

March 23, 2007 **(Nirmal Yadav)**
gk **Judge**